IN THE

# Supreme Court of the United States

OCTOBER TERM, 1921.

No. 263

JOSE J. BENITEZ DIAZ in his own right and as father with PATRIA POTESTAS over his minor unmancipated children CARLOTA, JOSEFA and JOSE BENITEZ SAMPAYO and DIEGO GARCIA ORTEGA,

*Petitioners,*

*vs.*

CARLOTA and CLEMENTINA GONZALEZ Y LUGO, represented by their guardian ad litem, ARTURO APONTE, JR., and MANUEL GONZALEZ Y LUGO,

*Respondents.*

## MEMORANDUM BRIEF FOR RESPONDENTS TO DISMISS THE WRIT OF CERTIORARI.

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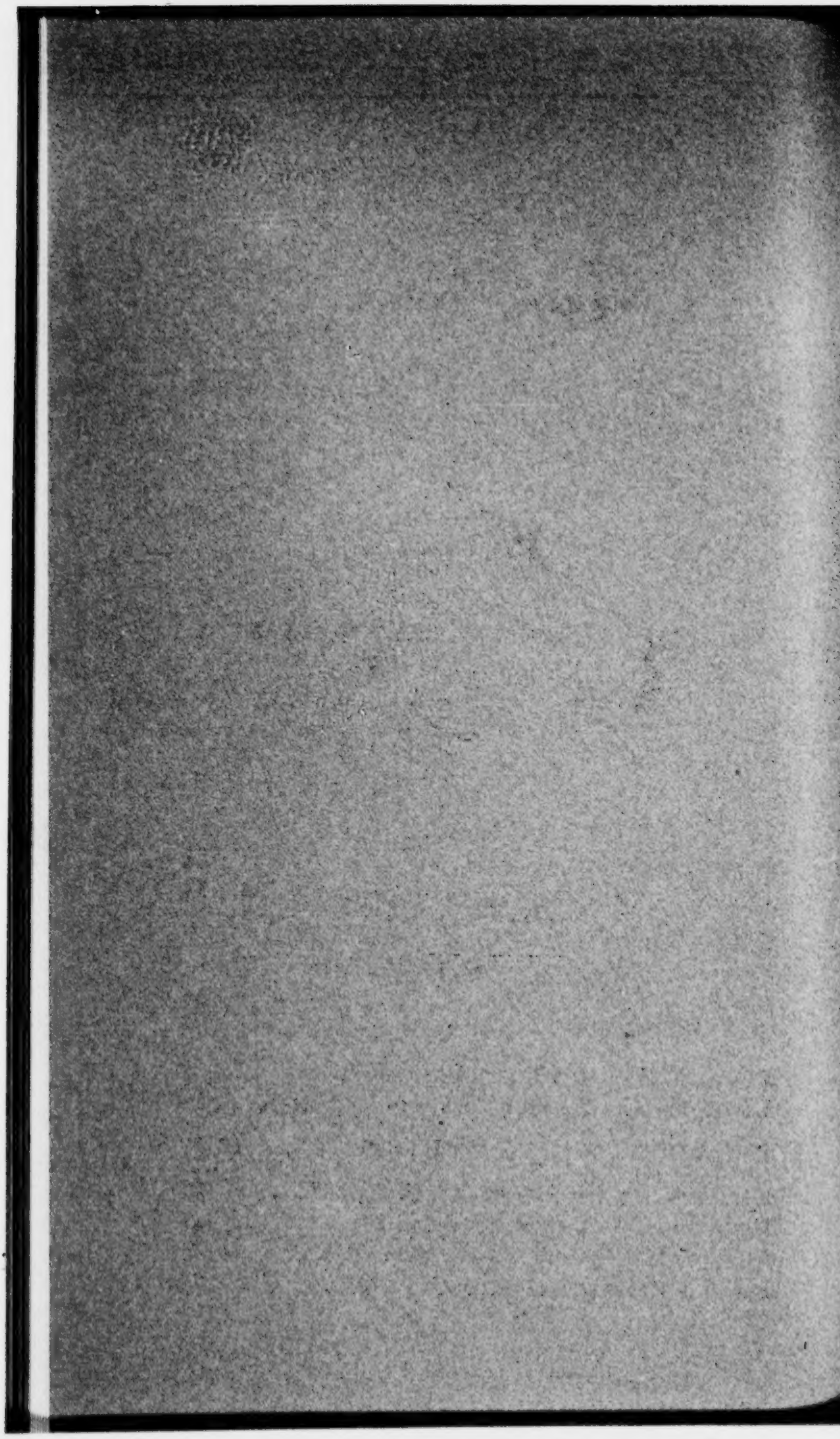

## SUBJECT INDEX.



## LIST OF CASES CITED AND REFERRED TO.

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## MEMORANDUM BRIEF FOR RESPONDENTS.

The facts in this case briefly stated are as follows:

The respondents herein, Carlota and Clementina Gonzalez y Lugo, by their guardian *ad litem*, Arturo Aponte, Jr., and Manuel Gonzalez y Lugo, plain-

tiffs below, brought this action in the District Court for the Judicial District of Ponce, Porto Rico, against Jose J. Benitez Diaz, in his own right and in representation of his minor children, to recover certain interests claimed by them in real estate situated within the Judicial District of Humacao, Porto Rico, together with the rents and profits thereof, on the ground that the sale of these interests by the mother, as their guardian, to the petitioner by virtue of a deed dated the 5th day of June, 1908, under authority granted by the District Court for the Judicial District of San Juan on the 27th day of May, 1908, was null and void for the reason that the District Court for the Judicial District of San Juan did not have jurisdiction to decree the sale, alleging that the only Court having jurisdiction to authorize such sale was the District Court for the Judicial District of Humacao, Porto Rico, in whose jurisdiction the property sold was situated.

The said District Court for the Judicial District of Ponce, Porto Rico, declared that the decree of the District Court for the Judicial District of San Juan, granting authority to sell the property, as hereinbefore stated, in so far as it referred to the interests of the three plaintiffs in the said property who were minors, was null, void and of no effect whatsoever, on the ground that the Court for the Judicial District of San Juan had no jurisdiction to enter its decree.

The petitioners herein, the defendant below, appealed from the said judgment of the District Court for the Judicial District of Ponce, Porto Rico, to the Supreme Court of Porto Rico, which last-mentioned Court, by a vote of four to one, re-

versed the judgment of the said District Court for the Judicial District of Ponce, and directed that the complaint be dismissed, the Supreme Court of Porto Rico holding in substance that the parties to the application having submitted themselves that Court acquired jurisdiction.

Thereafter the respondents herein, plaintiffs below, appealed from the decision of the Supreme Court of Porto Rico to the United States Circuit Court of Appeals for the First Circuit, assigning, as error, the following, to wit:

> "The Supreme Court of Porto Rico erred in holding that the District Court of San Juan was empowered and had jurisdiction to authorize Clementina Lugo Calzada as the mother of her minor children, plaintiffs herein, to sell the real property herein involved and which is situated within the Judicial District of Humacao, and likewise in holding that said sale so made was valid and in full force and effect, notwithstanding that such authorization was given by a Court which was not a Court within the territorial district in which the said property herein involved was situated."

The case came on regularly before the United States Circuit Court of Appeals for the First Circuit and was fully argued by respective counsel and briefs were filed upon the questions of law, which both parties considered material, and on November 1, 1921, the said Circuit Court of Appeals rendered its opinion, to the effect that the only Court of competent jurisdiction to authorize the sale of property belonging to minors was the Court for the Judicial District in which the property was situated, and that the parties to *ex parte* proceed-

ings in such cases could not submit themselves to the jurisdiction of the Court of any other District.

Under the above concise statement of the case, it is our contention that the decision of the United States Circuit Court of Appeals for the First Circuit was well founded, as the same faithfully interprets the law of Porto Rico on the subject.

Replying to the argument of the petitioners herein, to the effect that it was stated in the opinion of Judge Hutchinson, one of the Associate Justices of the Supreme Court of Porto Rico, that hundreds and perhaps thousands of recorded titles of real property in Porto Rico will be invalidated if the judgment of the United States Circuit Court of Appeals herein is allowed to stand unchallenged, we desire to state that only two other cases have arisen in Porto Rico involving similar questions, as in the instant case, to wit:

*Martorell* v. *Ochoa,* 26 P. R. R., 625.
*Ajenjo* v. *Rosa,* 26 P. R. R., 648.

In the above cases the identical question was involved as in the instant case and decided in the same manner as above stated by the United States Circuit Court of Appeals for the First Circuit and which cases have been brought before this Court upon writs of certiorari and are to be submitted together with the present case.

Assuming for the sake of argument that the rule in Porto Rico, as laid down by the Supreme Court of that island prior to the decision of the Supreme Court of the United States in the case of *Garzot* v. *Rubio,* 309 U. S., 303 (which we do not admit), was to the effect that parties could submit to any Court in matters similar to the one at bar, the

fact remains that since the rendering of the opinion in the *Garzot* v. *Rubio* case, some fourteen years ago, the two cases cited above and the instant case are absolutely the only cases involving the question that has been presented, and it certainly would be reasonable to assume that if there had been any further analogous cases they would have been submitted to the Courts ere this, especially so since the year 1915, when the Supreme Court of Porto Rico decided unequivocably that the sale of property belonging to minors was null and void unless the Court authorizing the sale was one of competent jurisdiction, and, therefore, we fail to find any logic in the statement cited by petitioners as having been made by Judge Hutchinson.

## History, Legislation and Precedents.

This question, since it affects minors in whose welfare the State is concerned, is of great importance, inasmuch as it embraces a question of public policy. Minors have always been the object of special legislation and the State, as well as the Courts, have never ceased to watch over their interests. If this were otherwise society would not rest on a solid foundation and nations would fail to accomplish their mission of civilization in the world.

First, we should ascertain what was the jurisprudence controlling the matter in Porto Rico, when the action was brought. In other words, what sources of investigation were opened for the purpose of arriving at a definite conclusion?

At the time of the sale of the real property belonging to these respondents, that is to say, in 1908, the revised Civil Code was in force and effect

in Porto Rico, Section 299 thereof being amended in 1907 (Acts and Resolutions of 1907, p. 285).

Going back to the time of Spanish sovereignty and up to and including the present, two Civil Codes have been in force in Porto Rico. The first went into effect on January 1, 1890, and was operative until June 30, 1902. The second became effective on July 1, 1902, and is still in force at this time.

When the first above-mentioned Code was in effect in Porto Rico, the Spanish Code of Civil Procedure was also in effect.

*Martorell* v. *Ochoa*, 23 P. R. R., 28.

The Spanish Code of Civil Procedure, in so far as it relates to the question in this case, provided as follows:

> "Article 56: Any Judge impliedly or expressly, agreed upon by the litigants, shall be competent to take cognizance of the suits arising from actions of all kinds."
>
> "This submission, however, can only be made to a Judge exercising ordinary jurisdiction and who is competent to take cognizance of questions similar to and of the same kind as the one submitted."
>
> "Article 58: An implied submission is made:
>
> First: By the plaintiff, by the act of filing his complaint before the Judge.
>
> Second: By the defendant, when after his appearance is entered in the action he takes any further steps therein except to formally object to the jurisdiction of the Judge by declinature."

> "Article 63: In order to determine competency, in cases other than those mentioned in the foregoing Articles, the following rules shall apply:"
>
> "Subdivision 23. In authorizations for the sale of property of minors or incapacitated persons, a competent Judge shall be that of the place where the property may be situated, or that of the domicile of the persons to whom it belongs."

When the Civil Code went into effect in the year 1890, Section 164 thereof read as follows:

> "Section 164: The father or the mother in the proper case, cannot alienate the real property of the child, the usufruct or administration of which belongs to them, nor encumber the same, except for sufficient reasons of utility or necessity and after authorization from the Judge of the domicile hearing the Department of Public Prosecution excepting the provisions, which, with regard to the effects of transfers, the Mortgage Law establishes."

It is not our purpose to discuss at this time whether this section was repugnant to Subdivision 23 of Article 63 of the Law of Civil Procedure then in force.

Article 71 of the Law of Civil Procedure makes express reservation in regard to special laws, as will be seen by the following:

> "Article 71: The rules established in the foregoing Articles shall be understood without prejudice to the provisions of law in special cases."

However, inasmuch as Section 164 of the Civil Code contains a special substantive provision as in

that relating to the matter of the sale of property belonging to minors, there is no doubt that the Civil Code should prevail over that of the Code of Civil Procedure.

What we will say, however, is that whether viewed from the standpoint of the Spanish Law of Civil Procedure (Article 63, Subdiv. 23), or from the standpoint of Section 164 of the Spanish Civil Code, there can be but one conclusion; namely, that if the theory of submission were allowed to prevail the provisions set forth in Subdivision 23 of Article 63 of the Spanish Law of Civil Procedure, which immediately follows the articles referring to such submission, would be superfluous.

If our contention is not sound, Subdivision 23, cited above, would serve no purpose and result in an absurdity.

The foregoing, we believe, states absolutely what the law was in Porto Rico during the Spanish sovereignty and under that law not a single case can be cited as having been decided by the Supreme Court of Spain or by the former Supreme Court of Porto Rico (Audiencia Territorial), holding that the theory of submission could be applied in *ex parte* proceedings petitioning for the authorization of the sale of property belonging to minors, for we can assure the Court that there is no jurisprudence whatsoever to substantiate the theory advanced by the petitioners.

Coming now to the jurisprudence in force in Porto Rico after the ceasing of Spanish sovereignty in 1898, a new Civil Code was enacted in 1902 and Section 229 thereof read as follows:

> "The father and the mother cannot alienate any real property belonging to their children the usufruct of which they receive or

> for which they have the administration, nor can they burden the same except by mutual consent and after securing the authorization of the District Court of their domicile."

This article was amended in 1907, which amendment will be found in the Acts and Resolutions of the Legislature of Porto Rico of that year at page 285, as follows:

> "The exercise of Patria Potestas does not authorize the father or mother to alienate or burden real property which in any manner belongs to the child and over which either of them have the administration except after securing judicial authorization, which shall be accorded by the District Court of the Judicial District where said property is situated, upon proof being furnished as to the necessity or utility of such transfer or burden."

Finally, in the year 1911, the above section was again amended, as appears from the Acts and Resolutions of the Legislative Assembly of Porto Rico of that year, page 118, as follows:

> "Section 229: The exercise of the Patria Potestas does not authorize the father nor the mother to alienate or lay any encumbrances upon real property of any class whatever, or upon personal property, the value of which exceeds $500, pertaining to the child, and which may be under the administration of the parents, without the previous authorization of the District Court wherein the property is situated and the administration of the necessity and utility of the alienation or encumbrance and in conformity with the provisions of Sections 80, 81 and 82 of an Act relative to special legal proceedings."

It will be observed that each successive amendment to this section of the Civil Code imposes greater limitations upon the power of the guardian in regard to the property of minors, for whose benefit it is needless to say such amendments were made. This shows conclusively that the Legislature has been vigilant and zealous in attempting to guard the property of minors, thereby limiting more and more the powers of the guardian and particularly designating the Court that is empowered to authorize the sale. This being true, how can it be contended that this designation of a Court by the Civil Code is or has become inoperative?

Touching on the Law of Procedure in Porto Rico, superceding that in force during the Spanish regime, we have the Act of the Legislative Assembly of Porto Rico of March 9, 1905, entitled "An Act Relating to Special Legal Proceedings," Section 80 of which provides as follows:

> "In all cases where, according to the provisions of the Civil Code, the parents or the tutors of a minor shall be in need of judicial authorization to do anything referring to the keeping of the said minor or of his property, a petition shall be filed with the District Court of competent jurisdiction, setting forth under oath the necessity of the objects sought, the advantage in suing therefrom to the minor, and the reasons for the request."

This same Act, in Section 85, provides as follows:

> "This Act shall take effect from and after its passage and all previous laws in conflict herewith are hereby repealed; but the special proceedings established in the Civil

> Code, in the Mortgage Law and its Regulations, and in any other law, in so far as not provided for by this Act, shall remain in force."

In view of the enforcement of this Act, all commentaries regarding the effectiveness of Section 229 of the Civil Code, which governs the proceedings and designates the Court having jurisdiction of the sale of the property of minors, are superfluous. If the Special Legal Proceedings Act expressly allowed the Civil Code to remain in full force and effect, and if said Act by Section 80, which we have transcribed hereinbefore, provides, as it does, that the petition for leave of the Court "MUST BE PRESENTED IN THE DISTRICT COURT OF COMPETENT JURISDICTION," there can remain no doubt that such District Court of competent jurisdiction shall be that Court designated by Section 229 of the Civil Code; namely, that District Court where the property of the minors is located, for if all District Courts were of *competent* jurisdiction in the matter the Special Legal Proceedings Act would not have used the words: "A PETITION SHALL BE FILED WITH THE DISTRICT COURT OF COMPETENT JURISDICTION," inasmuch as all the District Courts of Porto Rico possess the same jurisdiction.

In 1907 suit was brought in the District Court of the United States for Porto Rico by *Maria Rios de Rubio* v. *Juan Garzot et al.,* seeking, among other things, the delivery of certain hereditary property and the division and partition thereof. The decedent always lived in the District of Humacao, where she died, and the property sought to be recovered and partitioned was situated in that Dis-

trict; and this Court in that case expressed itself as follows:

> "By the Porto Rican Code of Civil Procedure, Article 62, Paragraph 5 (Art. 63), power to administer estates, both testamentary and intestate, is vested in the Judge of the last place of residence of the deceased. That the power thus conferred is exclusive is shown by the text of the same Article and by the comprehensive grant of authority embraced in the provisions of the Code, which follows, relating to the settlement of both testamentary and intestate successions."
>
> *Garzot* v. *Rubio*, 309 U. S., 303.

We cannot understand, under the Law cited and its interpretation as enunciated by this Court in the *Garzot* v. *Rubio* case, *supra*, how it can be contended that the point involved in the instant case has never been passed upon either by this Court or by the Supreme Court of Porto Rico, as it is clear to our mind that this Court, in deciding the *Garzot* v. *Rubio* case, held that the Federal Court had no power to take cognizance of the matter and this Court did decide that the Court having jurisdiction over such matters was the Court of the last place of residence of the deceased, and that said power was exclusive. Such is the interpretation also given to the statute in Porto Rico.

> *Esteras* v. *Arroyo*, 16 P. R. R., 689.
> *Martorell* v. *Ochoa*, 23 P. R. R., 28.
> *Nazario* v. *Registrar*, 16 P. R. R., 635.

We submit, therefore, that there should have been no doubt as to the interpretation of the law from and after the time that the *Garzot* v. *Rubio*

case was decided by this Court, and if any doubt existed prior thereto the rule of procedure should then have been established for all time, as unquestionably was the fact, as is shown by the decisions in the cases of *Esteras* v. *Arroyo* and *Nazario* v. *Registrar, supra.*

This principle was reaffirmed by the Supreme Court of Porto Rico in the case of

*Baerga* v. *Registrar,* decided May 20, 1921.

The petitioners contend that this is a typical case involving the doctrine of *stare decisis,* in that at the time that the District Court of San Juan authorized the sale in question it was then the well-established law of Porto Rico, especially under the decisions of the Courts of Spain, that in all matters of voluntary jurisdiction (*ex parte* matters), any Court having jurisdiction of similar matters became competent to entertain the application for such an authorization by the voluntary submission of the applicant, even though a certain Court was designated by another section of the Code of Civil Procedure or by special statute. And to substantiate their contention, decisions of the Supreme Court of Spain and of the General Directorate of Registries, as well as citations from Manresa's Commentaries on the Law of Civil Procedure and the Civil Code and also the case of *Sola* v. *Registrar,* have been cited.

Under the decisions of the Supreme Court of Spain, cited by petitioners, they undoubtedly sustain that in *ex parte* proceedings the petitioner may choose his Court and that such Court would be competent to take cognizance of the matter, but we should not lose sight of the fact that these

decisions were rendered in interpreting the Law of Civil Procedure of Spain, enacted there in 1855, by which (Section 1208) such line of procedure was expressly authorized therein, but we contend that that was not the case under the Law of Civil Procedure that superseded such enactment, and we feel confident that no like decision has ever been rendered by the Supreme Court of Spain, interpreting the sections of the Code applicable to the instant case which was in force at the time the sales herein took place, and we challenge the adverse party to cite one single case decided by the Supreme Court of Spain interpreting the Law of 1881 which changed the doctrine.

Consequently, the cases cited from the Supreme Court of Spain by the petitioners have no applicability either as jurisprudence or otherwise.

The decisions of the General Directorate of Registries, cited by counsel for petitioners, are neither decisions of the Supreme Court of Spain, nor of the Supreme Court of Porto Rico, and have no weight as such, inasmuch as the General Directorate of Registries of Spain is not a regular tribunal of justice, but simply a Board, whose decisions are not binding upon the Courts of Justice, since they are rendered in mere administrative appeals taken against the decisions of the Registrars of property.

> "Decisions rendered in administrative appeals from decisions of Registrars of property are not binding upon the Courts."
>
> *Martorell* v. *Ochoa*, 23 P. R. R., 28.

Therefore, how can it be contended for one moment that such decisions would be binding upon the highest Court of the nation when they are not

upon the inferior ones? And much less could such decisions be considered for the purposes connected with the doctrine of *stare decisis.*

We further urge upon the Court that the citations from Manresa's Commentaries, cited by petitioners, do not apply to the instant case. While Manresa as an authority on Civil Law in Spain cannot be questioned, and Courts frequently cite the author in illustrating certain questions of law, nevertheless his commentaries are not binding upon the Courts and, therefore, we fail to see how a conclusion can be reached in regard to the rule of *stare decisis* from Manresa's Commentaries. However, touching on this point and reading from Manresa's Commentaries on the Civil Code, Volume 2, pages 44 and 45, Third Edition, it is very clear that Manresa himself was in grave doubts when, after citing Paragraph 23 of Article 63 of the Law of Civil Procedure, the author concludes with the following words:

> **"However, to avoid any question it will be most prudent to apply to the judge of the domicile."**

As will be noticed, far from expressing a firm conviction of his idea of the Law, the author states in substance that to be within the Law authority for the sale of property belonging to minors should be applied for to the Judge of his domicile.

Counsel for petitioners cites also the case of

*Sola* v. *Registrar,* 8 P. R. R., 205,

but we contend that the Supreme Court of Porto Rico completely reversed itself in a case decided

by it in the year 1915, where, in a unanimous decision, it stated as follows:

> "The plain language of Article 164 of the Spanish Civil Code shows that the intention of the Legislature in enacting that authorization of Court should be necessary for alienating or encumbering the property of minors, was that such authorization should be granted by the Judge of the domicile of the minor and not by any other Judge, thus determining the authority which should complete the civil capacity of the father or the mother of the minor, which capacity can be completed only in the manner provided by said Article."
>
> *Martorell* v. *Ochoa*, 23 P. R. R., 28.

Thus it was in the above-mentioned case for the first time that the matter relative to the sale of minors' property in connection with the jurisdiction of the Courts was construed. And it was conclusively held by the Supreme Court of Porto Rico that the only Court having jurisdiction of the matter was that Court mentioned in Section 229 of the Civil Code.

Therefore, it must be concluded that the contention of the petitioner to apply the doctrine of *stare decisis* is not substantiated, for it is well established that in order to make this doctrine applicable the particular point under discussion would have had to be decided several times, thus determining a fixed rule of property. Such is not the case.

On May 27, 1908, the date of the authorization of the Court on which the present litigation is based—no judgment whatsoever, either of the Supreme Court of Spain or of the Supreme Court of

Porto Rico, had been rendered holding that authorizations for the sale of property belonging to minors could be granted "BY ANY JUDGE OF THE ISLAND."

It is manifest, therefore, that the doctrine of *stare decisis* cannot properly be invoked, because the essential requirement of precedent is lacking.

> *Bragg* v. *Mayor*, 141 Fed., 118.
> *Consolidated Rubber Co.* v. *Ferguson*, 183 Fed., 756.
> *Hertz* v. *Woodman*, 218 U. S., 205.

Citing from an old case which has been generally recognized as a true expression of a sound doctrine, we quote as follows:

> "Of course, I am not saying that we must consecrate the mere blunders of those who went before us and stumble every time we come to the place where they have stumbled. A palpable mistake, violating justice, reason and law, must be corrected, no matter by whom it may have been made. There are cases in our books which bear such marks of haste and inattention that they demand reconsideration. There are some which must be disregarded because they cannot be reconciled with others. There are old decisions of which the authority has become obsolete, by a total alteration in the circumstances of the country and the progress of opinion."
>
> *McDowell* v. *Oyer*, 21 Pa., 417-423.

If the Supreme Court of Porto Rico itself does not regard the cases relied upon by the petitioners herein, how then can opposing counsel seek to have this Court sustain the applicability of the doctrine

of *stare decisis?* Moreover, whatever may have been decided in the cases cited by counsel for petitioners, such decisions do not cover the point at issue, and even conceding that they did, which we deny, the doctrine therein involved is so erroneous that it cannot in any way serve as a basis for the rule of *stare decisis.*

We cannot agree with the learned counsel for the petitioners that error was committed by the United States Circuit Court of Appeals for the First Circuit **"in failing to apply the rule established by repeated decisions of this court, that a contract made on the faith of judicial interpretations of a statute cannot be impaired by a subsequent reversal of its decision."**

We fail to see where this well-known and established doctrine can be applied to the case at bar.

The Law in Porto Rico, as it stood at the time the properties belonging to your respondents were sold, left no room to doubt that the only Court having jurisdiction to grant authorization to sell property belonging to minors was solely that Court situated in the District wherein the minor resided or the property was located; and if the Supreme Court of Porto Rico in any case or cases established through its interpretation that any Court of the island would have jurisdiction through a submission of the parties (and which we deny), we contend that such ruling, if found to be erroneous, should be set aside, regardless of consequences, and the proper rule established once for all.

In the case of

*Genessee* v. *Fitzhugh*, 53 U. S., 455,

it was stated by this Court as follows:

> "It is the decision in the case of Thomas Jefferson which mainly embarrasses the Court in the present inquiry. We are sensible of the great weight to which it is entitled, but at the same time we are convinced that if we follow it, we follow an erroneous decision into which the Court fell, when the great importance of the question as it now presents itself could not be foreseen; and the subject did not, therefore, receive that deliberate consideration which at this time would have been given to it by the eminent men who presided here when that case was decided. For the decision was made in 1825, when the commerce on the rivers of the West and on the lakes was in its infancy and of little importance and but little regarded compared with that of the present day."

See, also:

*Kilbourn* v. *Thompson*, 103 U. S., 377.

The fact, therefore, remains that the petitioners were not misled when purchasing the property of the minors by virtue of any judicial interpretation of the statute relating thereto, in view of the fact that the sale took place prior to the time when the statute had been interpreted for the first time by the Supreme Court of Porto Rico. This was in the year 1915 and that Court then held that the only Court that could authorize the sale of property belonging to minors was that Court designated in the Civil Code.

*Martorell* v. *Ochoa*, 23 P. R. R., 28.

This judgment was later reversed by a divided Court, in the same case of *Martorell* v. *Ochoa*, 25 P. R. R., 707 (the instant case), two Justices having dissented, the other three Justices being of the opinion that any Court was empowered to authorize the sale, the letter and the spirit of the Civil Code notwithstanding.

## Conclusion.

The Civil Code of Porto Rico is very similar to the Louisiana Code, both having a common origin, and the former Law of Civil Procedure of Porto Rico was very similar also to that of Louisiana, and we refer in this connection to the following citation from a case in said State:

> "An Act of the Legislature, 3 Martin's Digest 132-17, requires the assent of the Judge of the Parish where the minor resides, to make an alienation of his property valid. The evidence here shows that the parties were not residents of New Orleans; the father, a few days before the sale of the property, it is true, made a declaration in this City that it was his intention to take up his permanent residence here, but the law requires more, a declaration before a Judge of the Parish from which the party removes, as well as that where he intends to reside.
>
> Considering, therefore, that the proper domicile of the minor was in the Parish of East Baton Rouge, I am of the opinion, that the whole of the proceedings before the Court of Probate were *coram non judice* and, of course, void."
>
> *Leonard's Tutor* v. *Mandeville*, 3 La. Rep., 486; 9 Mart.

To the same effect see:

*Hawkins* v. *Livingston,* 10 Mart., 444.
*Foley* v. *Moorhouse,* 13 La. Ann., 301.
*Fletcher* v. *Cavalier,* 4 La., 279.

In the State of Illinois there exists a statute substantially the same as Section 229 of the Civil Code of Porto Rico, both as it stood prior and after the amendment of 1907 cited herein, and the Supreme Court of that State, interpreting the local statute, stated:

> "The requirement of the statute that an application by a guardian to sell the real estate of his ward, shall be made in the County where the ward resides, or, in case the ward does not reside in the State, in some County where the whole or a part of the real estate is situated, is jurisdictional and any material deviation from these requirements, as to the Court in which the proceedings must be had, is fatal to the jurisdiction of the Court."

It has been judicially established that an infant cannot confer jurisdiction upon a Court by a voluntary appearance, nor can his parents or guardian.

*Phelps* v. *Heaton,* 79 Minn., 476.
*In re Bartell,* 9 Cal., 616.

Also see:

26 *Cyc.*, 281.

We fail to see in the present case where any question of gravity exists any different than it would in any other case.

And we contend that the petition should be dismissed.

**"Certiorari to review a judgment will not be granted by the Federal Supreme Court where such case, however important it may be to the petitioner, does not involve a question of gravity and general importance."**

*Fielder* v. *United States*, 205 U. S., 292.

"The Supreme Court will sparingly exercise the power to require a case to be certified by the circuit court of appeal, and will exercise it only when the circumstances of the case show that the importance of the question involved, the necessity of avoiding conflict between two or more courts of appeal, or between courts of appeal and the courts of a state, or some matter affecting the interest of the nation in its internal or external relations, demands such exercise."

*Forsyth* v. *Hammond*, 166 U. S., 506.

"The Supreme Court will direct a case which cannot be brought to it by appeal or writ of error to be certified only where questions of gravity and importance are involved, or in the interest of uniformity of decision."

*Lau Ow Bew* v. *United States*, 144 U. S., 47.

"The jurisdiction of the Supreme Court of the United States to require, by certiorari or otherwise, a case to be certified from the circuit court of appeals for its review and determination, should be exercised only in cases of gravity and importance, or in order to secure uniformity of decision."

*American Constr. Co.* v. *Jacksonville, T. & K. W. R. Co.*, 148 U. S., 372.

As stated on page 4 herein, there have been submitted to this Court two other cases brought up from the U. S. Circuit Court of Appeals for the First Circuit, on a writ of certiorari, which involve the identical question raised in the instant case, and counsel for respondents herein, who also represent the respondents in said two other cases, respectfully pray the Court to consider this brief as having also been submitted on behalf of the respondents in said two other cases, which are entitled as follows: *Joaquin Ramos Ferro and Hermanos Selles y Sobrino* v. *Felix Fabian et al.*, No. 726; *J. Ochoa y Hermano* v. *Miguel, Martorell y Torrens et al.*, No. 727.

For the reasons stated, we respectfully submit that the United States Circuit Court of Appeals for the First Circuit committed no error whatsoever in reversing the decision of the Supreme Court of Porto Rico, and, hence, we pray that the petition for certiorari herein be dismissed, with costs.

Respectfully submitted,

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